IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.304 OF 2005

Ajit Anandrao Sunkersett & Ors. ...Appellants

vs.

Orbit Construction & Realtors P.Ltd.& Ors ...Respondents

Mr.G.S.Hegde i/b M/s.A.R.Bhole & Co. for the Appellants
Mr.Shyam Divan i/b M/s.Y.M.Chaudhari for Respondent No.1
Mr.Jaykar i/b M/s.Khaitan & Jaykar for Respondent Nos.2 to 4.

CORAM: A.S.OKA,J.
DATE : MARCH 9,2005.

P.C.:

1. Heard Counsel appearing for the parties. After arguing the Appeal for some time, Shri Hegde, learned Counsel for the Appellants on instructions of the Appellants states that the Appellant will accept the impugned order dated 18th January 2005 passed by the Trial Court by which the plaint was ordered to be returned for presentation to the proper court. He states that within three weeks from today the Appellants will take back the plaint and will institute the same in appropriate court or will file a fresh suit. He, therefore, seeks permission to withdraw this Appeal.

2. Shri Diwan, learned Counsel for the Respondent No.1 states that the Respondent No.1 will abide by the statement made in pursis dated 26th August 2004 filed in Appeal from Order No.753 of 2004 for a period of four weeks from today. The said statement is accepted.

3. Subject to the statement of the learned Counsel for the

Respondent No.1 which has been accepted, Appeal from Order is dismissed as withdrawn. No order as to costs.

4. At this stage, Shri Hegde contended that an order was passed by the Trial Court directing that the Respondent Nos.2 to 4 herein be impleaded as party Defendants and the said order was challenged by filing a separate proceeding. He submitted that as a result of the order passed returning the plaint, the said proceeding has become infructuous and therefore, necessary clarification be made. It is accordingly clarified that the question whether Respondent Nos.2 to 4 are necessary or proper parties to the suit is kept open.

5. Parties to act upon an authenticated copy of this order.

JUDGE.